IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 34 OF 2004

Shri Surendranath Sripad
Sinai Dessai, Pernem Town
Pernem, Pernem Taluka, Goa. ... Appellant

versus

The Special Land Acquisition
Officer, Konkan Railway Corporation
Ltd., North Division, Panaji,
with his office at Souza Towers,
Opp. Municipal Garden,
Panaji-Goa. ... Respondent

Mr. S. G. Dessai, Senior Advocate with Mr. L. Alornekar, Advocate for the Appellant.

Mr. E. Afonso, Advocate for the Respondent.

CORAM : A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE : 14TH MARCH, 2005.

ORAL JUDGMENT(PER N.A.BRITTO, J.)

The unsuccessful applicant in L.A.C. No.129/1996 has filed this

appeal against the Judgment/Award dated 28-10-2003 of the learned IInd Additional District Judge, Panaji, rejecting the reference made by the applicant under Section 18 of the Land Acquisition Act, 1894(Act, for short).

2. Some facts are required to be stated to dispose off the present appeal.

It appears that the applicant's land admeasuring an area of about 25,315 sq. metres of survey nos.167/1, 168(Part), 163(Part) and 161(Part) of Pernem village, of which the applicant is either an owner or co-owner was acquired for the construction of new B.G line for Konkan Railway. In fact, the said area was included in an area of 4,48,613 sq. metres which was acquired in the villages of Revora in Bardez Taluka and Pernem in Pernem Taluka by virtue of Notification issued under Section 4(1) of the Act and published on Gazette dated 21-10-1991. The Land Acquisition Officer paid an amount of Rs.15/- per sq. metre for paddy land and Rs.18/- per sq. metre for mixed garden land in village Pernem, by his award dated 17-5-1994.

3. Dissatisfied with the compensation paid by the L.A.O, the applicant got a reference made, and in the said reference examined himself and two other witnesses, one of whom was stated to be an expert. The

learned Additional District Judge after considering the evidence produced by the applicant came to the conclusion that the applicant had failed to make out the case for enhancement.

4. At the time of hearing of this appeal, Mr. S. G. Dessai, the learned Senior Counsel, on behalf of the applicant has made a strenuous effort to get the case remanded for re-trial either to consider the awards and sale deeds which the applicant relied upon but did not produce in his evidence or by giving an opportunity to both the parties to lead further evidence for and against the enhancement sought by the applicant.

5. The case of the applicant before the learned Additional District Judge was fixed for production of documents on 28-10-1999 and on 4-12-1999 on which dates the applicant sought adjournments. The issues were settled on 21-1-2000 but subsequently the applicant filed an application seeking leave to produce an award dated 24-9-1999 in L.A.C. No.117/1997 which was not objected to by the respondent, and, again on 25-1-2001 filed another application to produce 3 awards namely, award dated 14-7-1997 in L.A.C. No.116/1990, award dated 20-2-1996 in L.A.C. No.74/1992 and award dated 23-12-1999 in L.A.C. No.112/1992 and this application was allowed by the learned IInd Additional District Judge by his Order dated 19-7-2001. However, when the evidence of the

applicant was recorded on 3-9-2002 the applicant produced only one award dated 24-9-1999 in L.A.C. No.117/1997 and remained satisfied with the same without producing the other awards mentioned in the said two applications. It is certainly not the case of the applicant that he was deprived of producing the said awards referred to him in the said two applications. It is quite probable that the applicant chose not to produce the other awards for reasons best known to the applicant and if the applicant himself chose not to produce the same we do not see any reason why the case of the applicant ought to be remanded back to the learned Additional District Judge to reconsider the said awards/documents which the applicant sought leave to produce but chose not to produce. He made no grievance about their non production before the learned trial Court. We are therefore not inclined to remand the case for re-trial.

5. In his evidence before the learned trial Court the applicant has chosen not to give the entire area of the said survey numbers of which he claims to be either an owner or co-owner or the acquired land itself. It appears that this land which has been acquired was situated at a distance of about 300 meters from the highway and about 2.5 kms. from Pernem market. The applicant admitted that the land of award dated 24-9-1999 - Exh.27 in L.A.C. No.117/1997 was superior in that it was situated in the Pernem market area. One does not know as to on which

date the land comprising of Exh. 27 was acquired though it is stated in the said award that it was acquired in the year 1994 by invoking the urgency clause. The learned Additional District Judge found that Exh. 27 was not comparable with the acquired land. Indeed, the learned Additional District Judge observed that there was nothing in the evidence of the applicant suggesting as to what was the similarity between the land of the award Exh. 27 and the acquired land.

6. In our view, unless evidence of some similarity between the land of the said award and the acquired land was led by the applicant there was no question of the said award being considered as indicium for the purpose of fixing the compensation of the acquired land. It appears that the applicant is also not at all conversant or familiar with the acquired land. It can be seen from his application dated 29-9-1994 that he stated that he is the sole owner of the properties surveyed under nos. 167/1 and 168(Part) while he is the co-owner of survey nos.163(Part) and 161(Part) to the extent of 1/8th share. However, before the learned trial Court, the applicant stated that the entire acquired land belonged to him except survey no.161 wherein he had a share of 1/12th. The applicant further stated that there are mundkars in the said property and also some tenants in respect of the paddy field area. His witness A.W.3/Rajendra Nakur also admitted in his cross-examination that there are tenants in

addition to mundkars, in the acquired land. It is now common knowledge that the mundkars are entitled to purchase their dwelling sites in terms of the Goa, Daman & Diu Mundkars(Protection from Eviction) Act, 1975 and the tenants have become deemed purchasers under the relevant provisions of the Goa, Daman & Diu Tenancy Act, 1964, and not only that the tenants who have become deemed purchasers are prohibited from using the land for any purpose other than agriculture by virtue of Goa Land Use Act, 1991. This being the position it was incumbent upon the applicant to have led evidence as to what was the balance area of the acquired land in his possession which could have been assessed as land having building potential. This was not done by the applicant. It is to be noted that the onus of proof of market value prevailing as on the date of Notification issued under Section 4(1) of the Act is always on the applicant claiming enhancement, which onus the applicant had miserably failed to discharge.

7. The evidence of A.W.2/Shri Bhobe who had valued the applicant's land at Rs.125/- per sq. metre was rightly rejected by the learned Additional District Judge relying upon the decision of this Court in the case of **Special Land Acquisition Officer(7) Bombay and Bombay Municipal Corporation** v. **Vishanji Virji Mepani and another** (AIR 1996 Bom 366). A.W.2/Shri Bhobe had inspected the land almost 11 years after the date of acquisition and he had not produced the sale instances on the

basis of which he had fixed the price, before the Court. Therefore, the learned Additional District Judge was right in holding that his opinion could not be looked into. That apart A.W.2/Shri Bhobe had not at all given reasons as to how he had arrived at the price of Rs.125/- per sq. metre and in the absence of any reasons given in support of his opinion, or having followed any known methods of valuation, the opinion of A.W.2/Shri Bhobe could not have been looked into. The cross-examination of A.W.2/Shri Bhobe shows that his credibility as an expert was also at stake.

8. In our view, the conclusion arrived at by the learned Additional District Judge in rejecting the reference cannot be faulted. It appears that the applicant adopted a very casual approach in leading evidence in support of his case for enhancement of compensation. We find there is no merit in this appeal. The same is hereby dismissed with costs to the Respondent.

A. P. LAVANDE, J.

N. A. BRITTO, J.

RD.